

**REMARKS**

Claims 23-29, and 31-33 are currently pending in the present application. Claims 1-22, and 30 have been cancelled without prejudice or disclaimer thereto.

Claims have been amended and introduced to recite a method for treating snoring and/or preventing or alleviating the effects of snoring in a subject in need thereof by orally administering an effective amount of an oat beta glucan composition. Adequate written descriptive support for the amended and new claims can be found throughout the detailed specification. For example, on page 3, beginning at line 18, Applicant discloses that an object of the invention is a method for preventing, treating or alleviating the effects of snoring in an individual in need thereof. Applicant then describes the details of these methods including disclosing that the composition can be administered orally. (See, e.g., page 6, line 30.)

Applicant has already identified support for the compositions in prior amendments. In addition, independent claims 23 and 27 use the transitional phrase "consisting essentially of" to define the scope of the composition. Applicant is using this transitional phrase consistent with MPEP 2111.03 (revised Feb. 2003). As disclosed in Applicant's specification on page 5, beginning at line 26, homopolysaccharides are distinct from other polysaccharides. Various examples are given of homopolysaccharides, including oat beta-glucan. Applicant notes that the homopolysaccharides included in the claimed subject matter are characterized by having repeating units of one type of saccharide. This is distinct from other polysaccharides, which can contain two or more different types of saccharide units along the backbone of the polymer chain. Hence, Applicant has identified, in the specification, that which materially changes the basic and novel character of the compositions recited by claims using the "consisting essentially of" transitional phrase.

Claims 28-29 use the closed-ended transitional phrase "consisting of" to recite the various ingredients of the composition, which requires oat beta glucan and glycerin; and claims 31-33 use the open transitional phrase "comprises" to recite the compositional ingredients. Accordingly, it is respectfully submitted that the amendments to the claims and new claims 31-33 are fully supported by the originally filed application.

### **Claim Objections**

Claim 30 was objected to as being in improper dependent form. In particular, it was asserted that claim 30 introduced new elements to the composition that were precluded by a closed independent claim. The rejection is traversed and it is respectfully submitted that claim 30 merely further defined those elements which were already present in claim 28 through claim 29. However, to expedite prosecution of the application, Applicant has cancelled claim 30 without prejudice or disclaimer thereto. Accordingly, the objection is now moot.

### **Rejection Under 35 USC 103**

Claims 23-30 were rejected under 35 USC 103(a) as being unpatentable over Hunter (6,159,459) in view of Reichert, Chen, Mitchell, Stillman, and WO00/25588. The rejection is traversed and it is respectfully submitted that pending claims 23-26, 28-29, and 31-33 are patentable within the meaning of 35 USC 103(a).

Applicant has amended the claims and introduced new claims to further distinguish the claimed subject matter from the cited art. In particular, Applicant has presented claims directed to a method of treating, preventing, or alleviating snoring in a subject in need thereof by orally administering an effective amount of an oat beta glucan composition. In particular, independent

claims 23 and 27 recite a method for treating snoring by orally administering an anti-snoring composition consisting essentially of an oat beta glucan composition. Dependent claims 24-26 further define aspects of the composition.

Independent claim 28 is directed to a method for treating snoring in a subject in need thereof by orally administering an effective amount of an anti-snoring composition consisting of oat beta glucan, glycerin, and several other ingredients including water. Dependent claim 29 further defines the amount of the oat beta glucan and glycerine.

New independent claim 31 is directed to a method of preventing, treating or alleviating the effects of snoring in a subject in need thereof by orally administering a composition comprising oat beta glucan, glycerin and water. Dependent claims 32 and 33 further define aspects of the composition.

In contrast, the art of record does not teach or suggest a method of treating snoring with the claimed compositions. Indeed, Hunter, Chen, and Stillman do not even relate to methods of treating snoring. Hunter relates to dry mouth (xerostomia); Chen relates to teas for their potential nutritional value; and Stillman relates to dietary fiber formulations for physiological metabolic benefits. None of these references, however, teach or suggest a method for preventing, treating or alleviating the effects of snoring. Nor do they teach a composition comprising oat beta glucan, glycerin and water, let alone the use of such compositions as recited in the pending claims.

Among the references that do relate to snoring, Reichert, Mitchell, WO00/25588, and Andermann, none of these references teach or suggest the benefit of using an oat beta glucan composition to alleviate the effects of snoring. Indeed, Applicant has provided data in the specification demonstrating the clinical effectiveness of its compositions to reduce snoring noise

and improve the quality of an individual's sleep. (See, e.g., the Results section on page 15; and also, Figs. 1-3.)

No cited reference teaches, or suggests the oral administration of an oat beta glucan composition for the treatment of snoring. Rather Reichert teaches surface active substances as its active ingredient. These substances are defined as polyoxyalkylene derivatives of sorbitan esters (see, e.g., column 3, beginning at line 51), lecithin (column 4, line 7), and generically fatty acid esters. There is no recognition in Reichert of the clinical effectiveness of oat-beta glucan in treating snoring and one of ordinary skill in the art would not have been directed to such a composition and use thereof based upon the combined teachings of the cited references, as further explained below.

Mitchell and WO00/2558 teach anti-snoring compositions which include natural oils such as almond, olive and sunflower oils. There is no teaching or suggestion in Mitchell or the WIPO reference of oat beta glucan and its effectiveness in treating snoring. Thus, even when combined with Reichert, these references do not suggest the claimed subject matter.

Andermann (a reference cited in previous Office Actions) teaches snoring using mucopolysaccharides, i.e., polysaccharides having more than one type of repeating saccharide. There is no teaching or suggestion in Andermann for the use of a homopolysaccharide, such as oat-beta glucan, let alone a method of treating, preventing, or alleviating snoring by administering an effective amount of a composition including oat beta glucan, as recited in the pending claims. Thus, not only does Andermann fail to direct one of skill in the art to the claimed subject matter, Andermann teaches away from the use of an oat beta glucan composition for the treatment, prevention or alleviation of snoring.

Based on the foregoing, it is respectfully submitted that claims 23-26, 27, 28-29 and 31-33 are patentable over the art of record. Favorable consideration and allowance of the claims are respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Daniel Bucca", written over the printed name.

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